

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

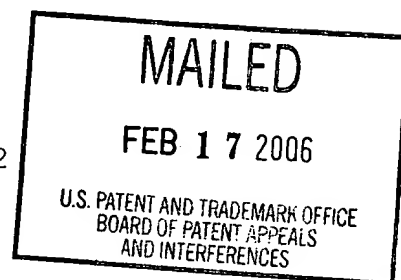
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MURALI SUNDAR

Appeal No. 2006-0078
Application No. 09/451,802

ON BRIEF



Before SMITH, RUGGIERO, and MACDONALD, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-21, which constitute all the claims pending in this application.

The disclosed invention pertains to a method and apparatus for managing the state of networked computers. More particularly, the invention relies on a mobile software agent that travels autonomously between selected networked computers and brings the selected computers into a preferred state of operation.

Representative claim 1 is reproduced as follows:

1. A method of managing the state of networked computers, comprising:

specifying a preferred state, wherein the preferred state comprises at least one of hardware or software configuration of the networked computers;

defining selected networked computers to be maintained in the preferred state;

monitoring the selected networked computers for deviation from the preferred state; and

bringing the selected networked computers that deviate from the preferred state to the preferred state via a mobile software agent that travels autonomously between the selected networked computers.

The examiner relies on the following references:

Adams	5,963,944	Oct. 05, 1999
Johnson et al. (Johnson)	5,987,135	Nov. 16, 1999

Appeal No. 2006-0078
Application No. 09/451,802

Walsh	6,233,601	May 15, 2001 (filed Nov. 13, 1997)
Meyer et al. (Meyer)	6,289,378	Sep. 11, 2001 (filed Oct. 20, 1998)

Claims 1, 2, 7, 8, and 16-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Adams in view of Meyer. Claims 3-6 and 10-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Adams in view of Meyer and further in view of Walsh. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Adams in view of Meyer and further in view of Johnson.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's

Appeal No. 2006-0078
Application No. 09/451,802

rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017

Appeal No. 2006-0078
Application No. 09/451,802

(1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

We consider first the rejection of claims 1, 2, 7, 8 and 16-21 based on Adams and Meyer. The examiner cites Adams as teaching a mobile software agent that travels autonomously between networked computers and manages the data stored at each network computer (node). The examiner notes that Adams does not

Appeal No. 2006-0078
Application No. 09/451,802

disclose that the preferred state of a network node comprises at least one of a hardware or software configuration for that node. The examiner cites Meyer as teaching the use of remote agents to manage the hardware and software configuration of a network. The examiner finds that it would have been obvious to the artisan to use software agents as taught by Meyer in Adams network [answer, pages 3-7].

We note that appellant's response to this rejection only argues the rejection with respect to independent claim 1. Therefore, we will consider the merits of this rejection with respect to claim 1 only. With respect to independent claim 1, appellant argues that the preferred state of the network achieved in Adams does not include hardware and software configurations as claimed. Appellant argues that each of the portions of Adams specifically cited by the examiner fails to address the claimed preferred hardware or software configuration. With respect to Meyer, appellant broadly asserts that Meyer fails to discuss any aspect of the claimed invention. Appellant also argues that there is no motivation to combine the teachings of Adams and Meyer [brief, pages 3-7].

Appeal No. 2006-0078
Application No. 09/451,802

The examiner responds that the balance agent of Adams, for example, fulfills the steps for a preferred state maintenance of the node. The examiner notes that although the fullness of a disk is not a form of hardware or software configuration, it does represent a preferred state of a computer. The examiner asserts that the index files of Adams are updated, and the file manipulations disclosed in Adams perform hardware or software configurations as broadly claimed. Finally, the examiner responds that one of ordinary skill in the art would have been motivated to combine the teachings of Adams with Meyer in order to improve on Adams' goal for scalability and configuration change abilities [answer, pages 9-12].

Appellant responds that Adams does not teach management of hardware or software configurations because the data and index files are not executable, or otherwise relate to hardware or software [reply brief].

We will sustain the examiner's rejection of representative claim 1 and of claims 2, 7, 8 and 16-21, which have not been separately argued. While appellant's brief argues that Adams fails to teach the claimed preferred state comprising

Appeal No. 2006-0078
Application No. 09/451,802

at least one of a hardware or software configuration, and while the examiner's response to arguments section of the answer attempts to show that the agents of Adams control a hardware configuration of a node, neither party seems to appreciate that the rejection itself relied on Meyer for teaching the management of hardware and software configurations using remote software agents. Appellant argues that Meyer has nothing to do with the claimed invention, but we disagree. Meyer clearly teaches use of a software agent for managing computer programs, computer files, computer settings, peripheral settings and the like [column 1, lines 35-38]. The user can make any adjustments to the computer through the agent [id., lines 43-44]. Meyer notes that the agent can be installed and stored locally on each client computer or the agent can be installed on a network server and executed on the client computers [column 3, lines 40-43]. It is clear that Meyer relates to computer networks in which a mobile software agent travels between client computers in order to bring these computers into a preferred hardware and/or software configuration. Although Meyer appears to be the better reference to us, we agree with the examiner that the claimed invention

Appeal No. 2006-0078
Application No. 09/451,802

would have been obvious to the artisan in view of the collective teachings of Adams and Meyer. The artisan would have been motivated to use software agents as taught by Meyer in Adams' network to achieve the type of scalability efficiency as taught by Adams in controlling hardware and software configurations as taught by Meyer.

We now consider the rejections of claims 3-6 and 9-15 based on Adams and Meyer and either Walsh or Johnson. The examiner has indicated how these claims are believed to be obvious over the applied references [answer, pages 7-9]. We find the rejections sufficient to establish at least a prima facie case of obviousness. Appellant has not specifically argued the rejections with respect to any of these claims, but instead, appellant asserts that these claims are grouped with claim 1 [brief, page 7]. Since the examiner has established a prima facie case of the obviousness of these claims, and since appellant's arguments have not persuaded us that the rejection of claim 1 was in error, we also sustain the examiner's rejection of claims 3-6 and 9-15.

Appeal No. 2006-0078
Application No. 09/451,802

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